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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAIJI IMAI

Appeal 2016-008596
Application 12/331,944
Technology Center 2400

Before ROBERT E. NAPPI, CATHERINE SHIANG, and STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] seeks our review under 35 U.S.C. § 134(a) from a final rejection of claims 1–24, i.e., all pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellant identifies the real party in interest as Nintendo Co., Ltd. App. Br. 3.

STATEMENT OF THE CASE

The Invention

According to the Specification, the invention relates to "an electronic program guide displaying system including [a] plurality of user terminals each having a display on which a plurality of program information are displayed in a matrix manner by taking one axis as a time axis and the other axis as a broadcast station axis and a server performing data communication with the plurality of user terminals via a network." Spec. 1:14–18.[2] The Specification explains that a "server calculates a degree of popularity of each program information on the basis of the results of the selections by the respective user terminals, and transmits the degree of popularity to each user terminal," and "a display manner of each program information is changed on the basis of the degree of popularity." Abstract.

Exemplary Claim

Independent claim 1 exemplifies the subject matter of the claims under consideration and reads as follows:

> 1. An electronic program guide displaying system comprising a plurality of user terminals each having a display to display a plurality of program information in a matrix manner by regarding one axis as a time axis and the other axis as a broadcast station axis, and a server to perform a data communication with said plurality of user terminals via a network, wherein

[2] This decision uses the following abbreviations: "Spec." for the Specification, filed December 10, 2008; "Final Act." for the Final Office Action, mailed July 16, 2015; "App. Br." for the Appeal Brief, filed January 11, 2016; "Ans." for the Examiner's Answer, mailed July 12, 2016; and "Reply Br." for the Reply Brief, filed September 12, 2016.

each of said user terminals configured to:

accept a selecting operation to select desired program information out of said plurality of program information;

receive selecting operations by a plurality of users;

transmit a result of the accepted selecting operation to said server, said result indicating a total of the selecting operations when the same program information is selected by two or more users;

receive the result of the selecting operations of each of said program information from said server; and

change a display manner of each program information displayed in a matrix on the basis of the result of the selecting operations from each of the user terminals,

said server configured to:

receive a result of said selecting operation from each of said user terminals;

calculate the result of the selecting operations of each of said plurality of program information, the result is calculated based on the total of selecting operations when the total of selecting operations is transmitted; and

transmit said calculated result to each of said user terminals.

App. Br. 25–26 (Claims App.).

The Prior Art Supporting the Rejections on Appeal

As evidence of unpatentability, the Examiner relies on the following prior art:

Berezowski et al. ("Berezowski")	US 2002/0056087 A1	May 9, 2002
Sie et al. ("Sie")	US 2003/0233656 A1	Dec. 18, 2003
Yasukawa et al. ("Yasukawa")	US 7,047,550 B1	May 16, 2006

Conkwright et al. ("Conkwright")	US 7,146,329 B2	Dec. 5, 2006
Ruiz-Velasco et al. ("Ruiz-Velasco")	US 2009/0019488 A1	Jan. 15, 2009 (filed July 10, 2007)
Mikami et al. ("Mikami")	US 2009/0144777 A1	June 4, 2009 (filed Nov. 29, 2007)

The Rejections on Appeal

Claims 1–4, 9–12, 15–22, and 24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Berezowski and Mikami. Final Act. 4–8; Ans. 2–7.

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Berezowski, Mikami, and Ruiz-Velasco. Final Act. 9; Ans. 7–8.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Berezowski, Mikami, and Yasukawa. Final Act. 10–11; Ans. 8–10.

Claims 13 and 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Berezowski, Mikami, and Conkwright. Final Act. 12–14; Ans. 10–12.

Claim 23 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Berezowski, Mikami, and Sie. Final Act. 14–15; Ans. 13–14.

ANALYSIS

We have reviewed the rejections of claims 1–24 in light of Appellant's arguments that the Examiner erred. For the reasons explained below, we disagree with Appellant's assertions regarding error by the Examiner. We adopt the Examiner's findings in the Final Office Action

(Final Act. 2–15) and the Answer (Ans. 2–17). We add the following to address and emphasize specific findings and arguments.

The Rejection of Claims 1–4, 9–12, 15–22, and 24 Under 35 U.S.C. § 103(a)

INDEPENDENT CLAIMS 1 AND 15–22

Appellant asserts that the Examiner erred in rejecting the independent claims because Mikami does not disclose or suggest "change a display manner of each program information displayed in a matrix on the basis of the result of the selecting operations from each of the user terminals," as recited in claim 1 and similarly recited in claims 15–22. App. Br. 18–20; Reply Br. 2–3. Appellant concedes that Mikami discloses a program guide "where the different programs are ordered (or ranked) based on their degree of popularity," i.e., "displayed in order of real-time popularity." App. Br. 18–19 (citing Mikami ¶¶ 41–43, 46, Fig. 4); *see* Reply Br. 2. Appellant contends, however, that "simply reordering different programs based on their popularity does not at all correspond to changing the display form," i.e., to "changing the display form of each program (i.e., each program in an individual cell of the display)." App. Br. 19; *see* Reply Br. 2. Appellant additionally contends that "simply changing the location of an item does not effectively change how it is displayed." Reply Br. 3.

Appellant's contentions do not persuade us of Examiner error. "[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000). The Examiner determines that under the broadest reasonable interpretation, "changing a display manner includes changing the order of the programs in the electronic program guide matrix

so that users can visually grasp the degree of popularity of a program by looking at the electronic program guide matrix." Ans. 15; *see* Final Act. 2–3, 5. The Examiner finds that Mikami teaches a method of (1) "compiling in real-time the most watched television program guide wherein a program guide generator obtains viewership information in real-time from users by monitoring the number of user requests for a particular program" and (2) "displaying the most popular or most watched programs first in the program guide matrix based on the monitoring of user selections of a particular program." Ans. 14–15 (citing Mikami ¶¶ 43–46); *see* Final Act. 2–3 (citing Mikami ¶¶ 43, 45–46). Changing the location of a more-popular program item from a lower position to an upper position in a display and concurrently changing the location of a less-popular program item from an upper position to a lower position in a display corresponds to changing the "display manner of each program information" according to the independent claims. *See* Ans. 14–15; Final Act. 2–3.

Appellant asserts that "Mikami is not actually altering the appearance (or display manner) of each individual element (e.g., by displaying in different colors and/or different shades of various colors)." Reply Br. 3. The independent claims, however, do not require altering the appearance of program items but more broadly encompass changing their "display manner." App. Br. 25–26, 30–36 (Claims App.). The term "manner" means "mode of presentation."[3]

Appellant argues that Mikami reorders "channels based on the popularity of certain programs shown on the channel" and does not reorder

[3] Merriam-Webster.com, https://www.merriam-webster.com/dictionary/manner.

program items based on program popularity. Reply Br. 3; *see* App. Br. 20. But Mikami discloses that "the program guide is ordered based on real-time determined popularity of programs" using "viewership information in real-time from users." Mikami ¶¶ 35, 44; *see* Ans. 14–15 (citing Mikami ¶¶ 35, 38, 43–46). Mikami also discloses that "the most popular real-time content is shown and display[ed] first." Mikami ¶ 43; *see* Final Act. 2; Ans. 14. Thus, Mikami arranges program items based on program popularity. Mikami explains that "the program guide can be continuously updated and reordered" using real-time viewership information. Mikami ¶ 45; *see* Final Act. 2; Ans. 14–15. Because Mikami reorders program items using real-time viewership information, program item reordering corresponds to channel reordering.

For the reasons discussed above, Appellant's arguments have not persuaded us that the Examiner erred in rejecting the independent claims for obviousness based on Berezowski and Mikami. Hence, we sustain the rejection of claims 1 and 15–22.

DEPENDENT CLAIMS 2–4 AND 9–12

Appellant does not make any separate patentability arguments for dependent claims 2–4 and 9–12. App. Br. 18–23; Reply Br. 2–7. Because Appellant does not argue the claims separately, we sustain the rejection of claims 2–4 and 9–12 for the same reasons as claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DEPENDENT CLAIM 24

Claim 24 depends from claim 1 and specifies that "the display manner of each program information displayed in each cell of the matrix is changed on the basis of the result of the selecting operations from each of the user

terminals." App. Br. 37 (Claims App.). Appellant asserts that the Examiner erred in rejecting claim 24 for essentially the same reasons as claim 1. *Compare* App. Br. 21, Reply Br. 4–5, *with* App. Br. 18–20, Reply Br. 2–3.

Appellant's assertions do not persuade us of Examiner error. Changing the location of a more-popular program item (or first cell) from a lower position to an upper position in a display and concurrently changing the location of a less-popular program item (or second cell) from an upper position to a lower position in a display corresponds to changing "the display manner of each program information displayed in each cell" according to claim 24. Thus, we sustain the rejection of claim 24.

The Rejection of Claims 5 and 6 Under 35 U.S.C. § 103(a)

Claim 5 depends from claim 1 and specifies that "a density of a display color of each of said program information is changed on the basis of said result." App. Br. 27 (Claims App.). Dependent claim 6 includes a similar limitation. *Id.* When arguing the patentability of these claims, Appellant admits that Ruiz-Velasco discloses color-coding a program guide with multiple colors to "show varying degrees of recommendation (e.g., red for highly recommended, orange/yellow for lesser recommended)." App. Br. 22; *see* Reply Br. 5–6. Appellant asserts, however, that Ruiz-Velasco "does not change the color density of different elements in the program guide, let alone change the color density based on the result of selecting operations from multiple user terminals." App. Br. 22; *see* Reply Br. 6–7. According to Appellant, "changing the color of an item does not reasonably correspond to changing the color density of the item." App. Br. 22. Appellant also asserts that Ruiz-Velasco "fails to disclose or suggest that 'a density of a display color of each of said program information is changed on

the basis of said result,' as required by dependent claim 5 (and similarly required by dependent claim 6)." App. Br. 22–23; Reply Br. 6–7.

Appellant's assertions do not persuade us of Examiner error. The Examiner finds that "Berezowski in view of Mikami teaches changing a display manner based on calculated results." Final Act. 9; Ans. 7; *see also* Final Act. 5; Ans. 3–4, 14–15. Appellant does not address that finding. App. Br. 22–23; Reply Br. 5–7. Also, Appellant does not articulate or identify a definition for the term "color density." App. Br. 22–23; Reply Br. 5–7. Further, the Examiner finds that Ruiz-Velasco teaches a program guide with personalized program recommendations for users and color codes denoting the degree of program relevance. Ans. 16 (citing Ruiz-Velasco ¶¶ 33–34, 42, Figs. 4–5); *see* Final Act. 9 (citing Ruiz-Velasco ¶¶ 27, 33). In particular, Ruiz-Velasco discloses color-coding a program guide to "distinguish shows/programs that are recommended" and showing "varying degrees of recommendation" using "varying . . . colors." Ruiz-Velasco ¶¶ 33–34. For instance, pink and red constitute different colors, with pink a lighter variation of red. Consequently, Ruiz-Velasco teaches or suggests using different color densities. Similar to Ruiz-Velasco, the Specification discusses color-coding using different colors (white and red, for example) and lightening or darkening a color "depending on the level of the degree of popularity." Spec. 46:13–21. Thus, we sustain the rejection of claims 5 and 6.

The Rejections of Claims 7, 8, 13, 14, and 23 Under 35 U.S.C. § 103(a)

Appellant does not make any separate patentability arguments for dependent claims 7, 8, 13, 14, and 23. App. Br. 18–23; Reply Br. 2–7. Because Appellant does not argue the claims separately, we sustain the

rejections of claims 7, 8, 13, 14, and 23 for the same reasons as claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner's decision to reject claims 1–24.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED